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# FROM COUNSEL

A Preventive Law Service of the Fort Riley Legal Assistance Office  
*Keeping You Informed On Personal Legal Affairs*

## Kansas Landlord Tenant Law

1. **PURPOSE:** To provide information regarding entering and terminating a lease in Kansas.

2. **PREPARATION:**

To **avoid legal problems**, you must consider many important things before renting. Some considerations are: the location of the rental property, the amount of space, the terms of the lease, the cost, the length of time you want to live there, and your ability to terminate the lease. If you have researched these issues and are comfortable with the results, the next step is to go to the Housing Office.

**Contacting the Housing Office is required** if you plan to live off-post. There are important questions to ask at the Housing Office. Ask if the property has been inspected. Ask if previous tenants made any complaints about the property or against the landlord. Also, you should talk to other soldiers who rent in the neighborhood you plan to live in. They can tell you things about the neighborhood that employees at the housing office may not be aware of.

3. **INSPECTION:**

This can keep you from paying for other tenants' damages. If you have done your research and have found a property that suits your needs, take a friend as a witness and a camera, and do a walk-through inspection. Document the inspection of the property with the landlord. Document and photograph any and all damage you find. You and the landlord should both sign and date the inspection checklist. Keep a copy of the inspection for your records. Kansas law says that you and the landlord are to do the inspection together. If the landlord does not conduct the inspection with you within five days after you move in, then do one with a member of the housing staff and send a copy of the checklist to the landlord by certified mail. Take pictures or a video of the property. If you find any damage after you have done the inspection, let the landlord know, in writing, and keep a copy for yourself with your checklist. Complete a walk-through again at lease termination.

4. **READ AND UNDERSTAND ALL DOCUMENTS AND RELEVANT LAW BEFORE SIGNING:**

**A lease is a binding, legal contract. Make sure you know how to get out of the lease before you sign it. You can bring the lease to Legal Assistance for review before you sign it.** Before signing the lease, read it thoroughly. If there are parts of the lease you do not understand or parts that you disagree with, don't sign the lease. Discuss the matter with your landlord. If you still do not understand a portion of the lease or disagree with any part of the lease, call the Legal

Assistance Office. **Get legal advice!** Finally, **do not rely on verbal promises made by the landlord. Write all promises in the lease.**

## 5. MILITARY CLAUSE:

Any clause within the lease indicating the Servicemembers Civil Relief Act (SCRA) will not apply or that you are waiving any of your rights under the SCRA **is not valid. If there is a military clause, it should be more favorable to your situation than the SCRA.** The SCRA provides for termination of leases by Servicemembers and Dependents after receipt of certain military orders. The soldier must give the landlord written notice of their intent to move out and to furnish the landlord a copy of their orders or a commanders letter more than thirty days before a full month's final rent is due. If the landlord will not let you change his or her military clause, **see Legal Assistance before you sign the lease.**

## 6. SERVICEMEMBERS CIVIL RELIEF ACT (SCRA):

The SCRA provides the following protections to service members regarding residential leases:

1.) **Eviction Protection.** The SCRA requires the landlord to obtain a court order to evict a servicemember, or his/her family, from rental property for nonpayment of rent if the monthly rent amount does not exceed \$2,400. For calendar years beginning with 2004, the monthly rent amount shall be increased by the housing price inflation adjustment for the calendar year. Demands to pay rent by the landlord are not considered an eviction. The landlord must be attempting to dispossess you of your property before the SCRA applies.

2.) **Stay of Execution.** If you are deployed and the landlord obtains a court ordered eviction against you for unpaid rent, upon request to the court, the SCRA may be applied to temporarily stay (stop) the execution of the judgment. The stay may be granted by the court until you or your attorney can appear in court. Your commander should make a written request for the stay from the judge explaining the reasons why you cannot be present and the date when you could be present or could have an attorney appear on your behalf. The legal assistance office can provide you with a letter format for the request. However, even if the judgment is stayed (stopped), you can still be held liable when you return.

3.) **Termination of Lease IF you enter Active Duty, PCS, or Deploy for at least 90 Days.** The SCRA allows a servicemember to terminate a residential, professional, business, or agricultural lease upon entering the military service, upon receiving permanent change of station orders, or deploying for more than ninety days. If you qualify for termination of the lease on this basis, deliver written notice and a copy of your orders to your landlord. The Legal Assistance Office can help you with a sample format for your notice.

## 7. KANSAS LAW:

K.S.A. Chapter 58, Section 2570, as amended, provides a basic termination for military necessity for a month-to-month lease. Subparagraph (b), as amended, says: "The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other party stating that the tenancy shall terminate upon a periodic rent-paying date not less than ...30... days after the receipt of the notice, except that not more than ... 15 ... days' written notice by a tenant shall be necessary to terminate any such tenancy where the tenant is in the military service of the United States and termination of the tenancy is necessitated by military orders. Any rental agreement for a definite term of more than ... 30 ... days shall not be construed as a month-to-month tenancy, even though the rent is reserved payable at intervals of ...30 ... days". [Note: The amendment went from spelling out the numbers to just citing numbers of days].

## 8. SECURITY DEPOSIT:

1.) When you lease, you may have to pay a security deposit. Whether it is based on your rent or is a flat fee, your security deposit generally cannot exceed your monthly rent. There are three **exceptions** to this rule. First, if you have a **pet**, you may be required to pay a deposit that is one and one half (1 ½) times your monthly rent. Second, if you move into a **furnished home**, you may also be required to pay a deposit that is one and one half (1 ½) times your monthly rent. If you rent a home that is **furnished and you have pets**, your deposit can be as much as twice your monthly rent. Finally, some housing authorities are authorized to set security deposit schedules allowing tenants to pay the security deposit in installments as opposed to one lump sum. If your security deposit amount exceeds your monthly rent have it reviewed by the Legal Assistance Office before you sign the lease.

2.) **Do not try to use your security deposit to pay rent while leasing.** Kansas law says that you can lose your security deposit. In addition, you may still be held responsible for the rent you were trying to pay with your security deposit.

3.) Generally, upon termination of your lease, whether proper or improper, the landlord is required to return your security deposit. The landlord may, however, withhold some or all of your security deposit if you have rent that is past due, if you damaged the home, or the landlord suffered some other expense because you did not comply with the law or rental agreement. Other expenses can include: running an ad to fill an improper vacancy, cost of cleaning, or repairs that were your responsibility. If the landlord keeps your security deposit, he or she must explain why and **itemize the amount deducted** from the security deposit. This itemized list must be in your possession no later than **fourteen days after the landlord determines his or her damages**. The landlord must determine his or her damages and send you the itemized list no more than **thirty days after you have turned in your keys**. If the landlord does not itemize his or her damages, but instead tries to keep your security deposit just because you broke your lease, you

can file a suit in Small Claims Court for one and one half (1 ½) times the amount wrongfully withheld.

- 4.) **Beware!** Landlords sometimes include **forfeiture or termination clauses** in their lease agreements requiring automatic forfeiture of your security deposit or payment of a fee if you improperly terminate your lease before the lease term ends. If you recognize this clause when reviewing the lease, **do not sign the lease**. Tell the landlord that the law does not allow automatic forfeiture of your security deposit unless you use it to pay rent while leasing. Additionally, the SCRA does not allow for any penalty if you must terminate early under military orders. The landlord cannot require your signature to a separate agreement regarding forfeiture or termination after your lease is signed, either.

## 9. TERMINATION:

The way to terminate a lease agreement is determined by whether the lease is month-to-month or a lease for a term. **Seek legal advice before you terminate your lease.**

- 1.) **Month-to-Month Lease:** A month-to-month lease does not specify a date when the lease terminates. For normal situations, written notice must be given thirty days prior to the next rent due date, otherwise you may owe another month's rent.

- 2.) **Lease for a Term:** A lease for a term is a lease for a period of time, for example six months or a year. This is the most common type of lease. The general rule is that a lease for a term is binding and cannot be terminated early. In addition, most leases will require you to give written notice thirty days prior to the end of the term if you are not going to renew your lease. There are exceptions to this general rule. The following "problem" situations allow for early termination of a lease for a term. Again, seek legal advice before your terminate your lease.

## 10. PROBLEMS WITH THE RENTAL PROPERTY

- 1.) If the home or apartment you rented **needs repair, immediately notify the landlord of the problem(s) in writing**. Send the letter to the landlord by registered mail (return receipt requested) on or before the date your rent is due. Your receipt is proof that you sent the letter. Describe the problems that need repair and state that the landlord has fourteen days to make a good faith effort to fix them. If the landlord does not attempt to fix the problem within thirty days after receipt of the notice, you can terminate the lease.

- 2.) If the landlord attempts to fix the problem, but the same or similar problems arise, write another thirty-day notice of your intent to terminate the lease. If the problem is so severe that you think it poses a threat to your health or the health of you family, contact your county health, building code and housing departments, and file written complaints. They will document any illegal conditions and make sure your landlord addresses them. Also, ask the Housing Office on post to document the

problem. **Warning: Some landlords include clauses that make you responsible for all maintenance and repairs!**

## 11. MITIGATION

If you enter into a lease for a term (e.g., one year), and leave before the term expires, the landlord can sue for the rent owed on the remaining months leased. However, the landlord must first attempt to mitigate his/her damages. This means that the landlord must attempt to re-rent the premises as soon as he/she knows that you are leaving. The landlord must then subtract the rent he/she receives from the amount due under the lease. You are responsible for the balance.

## 12. OTHER HELPFUL SOURCES OF INFORMATION:

### **U.S. Department of Housing and Urban Development (HUD)**

<http://portal.hud.gov/hudportal/HUD>

### **Kansas Attorney General's Office**

<http://www.ksag.org/home/>

#### **Fort Riley**

- Legal Assistance Office (785-239-3117); provides legal advice and assistance in the area of landlord-tenant issues affecting soldiers and their families
- Off-Post Housing Office (785-239-6927); receives complaints concerning area landlord practices

#### **Manhattan**

- City of Manhattan Code Inspection Office (785-587-4506), 1101 Poyntz Avenue; enforces city housing codes and determines whether housing is substandard
- Human Resources (785-587-4506); Investigates complaints of discrimination in violation of Manhattan ordinances
- Landlord and Tenant Rights (785-587-2440)
- Housing and Credit Counseling, Inc. (HCCI) (785- 539-6666), <http://www.hcci-ks.org/>

#### **Junction City**

- Public Housing Authority (785-238-5882)
- Geary County Landlord's Association (785-238-3760)

Last Updated:  
September 2013  
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